

ST 02-0099-GIL 04/30/2002 SALES AT RETAIL

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). (This is a GIL).

April 30, 2002

Dear Xxxxx:

This letter is in response to your letter dated March 28, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

Would you please explain to me the process of 'taxing goods' sold to the public and how does the Revenue Dept. insure that the products which are to be sold are in-fact 'taxed properly' by a distributor, vendor, etc? Is there a law local, state or federal 'mandate' for the collection of taxes on [a]ll products? Specifically, are taxes due on liquor, soda, cigarettes, candie, sneakers to name a few? I appreciate any/anll response to the above.

Thank you.

PS: Is there a penalty for the selling of said items by anyone without a tax stamp?

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). A "sale at retail" is defined as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property..." See the enclosed copy of 86 Ill. Adm. Code 130.201. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition). These taxes work together to tax tangible personal property sold at retail. Liquor, soda, cigarettes, candy, shoes are all taxed under these two Acts. In addition, separate taxes are imposed upon liquor and cigarettes.

The violations for failing to register as a retailer and for failing to remit tax collected range from a Class A Misdemeanor to a Class 3 felony. See 35 ILCS 120/13. Penalties and interest may also be imposed.

Alcoholic beverages are subject to the high rate (6.25%) of tax when sold at retail. Please note that Section 130.2060(a) states:

Persons engaged in the business of selling alcoholic beverages to purchasers for use or consumption are required to remit Retailers' Occupation Tax to the Department upon their gross receipts from such sales, notwithstanding the fact that manufacturers and importing distributors of alcoholic beverages are required to pay certain taxes under The Liquor Control Act of 1934.

It is immaterial whether such alcoholic beverages are consumed on or off the premises where such alcoholic beverages are sold. In computing Retailers' Occupation Tax liability, no amount may be deducted from gross receipts from retail sales of alcoholic beverages to cover the taxes which have been paid by manufacturers or importing distributors of alcoholic beverages under The Liquor Control Act of 1934.

As stated above, the Liquor Control Act of 1934 imposes a tax upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic liquor. See 235 ILCS 5/8-1 et seq. (2000 State Bar Edition). This gallonage tax on liquor is imposed upon "manufacturers" and "importing distributors." "Manufacturers" includes "every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package, whether for himself or for another, and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors." Likewise, an "importing distributor" is a person who imports into this State, either for himself or another, alcoholic liquors.

Criminal violations of the Liquor Control Act of 1934 are governed by the Liquor Control Commission. Penalties and interest may be imposed for failure to file returns and pay taxes.

Under the Cigarette Tax Act, a tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State. See 86 Ill. Adm. Code 440.10. Payment of the tax shall be evidenced by a stamp affixed to each original package of cigarettes. See 86 Ill. Adm. Code 440.20. It is the duty of each distributor to collect the tax from the retailer at or before the time of the sale, to affix the required stamps and to remit the tax collected from retailers to the Department. See 86 Ill. Adm. Code 440.10.

Please note that Section 24 of the Cigarette Tax Act, 35 ILCS 130/24, states that any person other than a licensed distributor who sells, offers for sale or has in his possession with intent to sell or offer for sale, an original package, not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original package shall be guilty of a Class 4 felony.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.